SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 500

THE UNION NATIONAL BANK OF WICHITA, KANSAS,

Appellant,

vs.

CARL C. LAMB

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI.

STATEMENT OPPOSING JURISDICTION

DANIEL L. BRENNER,
Counsel for Appellee.

ROACH, BRENNER & WIMMELL,
Of Counsel.

INDEX

Subject Index

Table of Cases Cited

Statutes Cited

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 500

THE UNION NATIONAL BANK OF WICHITA, KANSAS, A CORPORATION,

Appellant,

vs.

CARL C. LAMB

Appellee.

STATEMENT IN OPPOSITION TO APPELLANT'S JURISDICTIONAL STATEMENT

Comes now Carl C. Lamb, appellee herein, and in opposition to appellant's jurisdictional statement, states and shows to the Court:

I

No Substantial Federal Question Is Presented by This Appeal

This appeal presents no substantial Federal question, and therefore should be dismissed. The question involved in this case is simple and clear cut. Appellant obtained judgment against the appellee on December 8, 1927, at Denver, Colorado, in the District Court for the Second Judicial District of Colorado. This judgment was revived on October 27, 1945, more than seventeen years after its original

rendition. Substituted personal service in the revival proceedings was had on appellee by registered mail and by delivery by a deputy sheriff of Jackson County, Missouri, at Kansas City. The present action on this Colorado judgment, as revived, was filed December 13, 1945, in the Circuit Court of Jackson County, Missouri, at Kansas City. Appellee defended this suit upon the ground that the action was barred by the applicable Missouri statute of limitations, Section 1038, Missouri Revised Statutes, 1939. Judgment of the trial court was for appellee, and the judgment was affirmed by the Supreme Court of Missouri, Division One, by opinion. 213 S.W. (2d) 416. Appellant contends that the application of this statute of limitations and consequent denial of recovery constitutes a failure to give full faith and credit to the Colorado judgment as is required by Article IV, Section 1, of the Constitution of the United States.

The Missouri Statute, section 1038, *supra*, has been held to be a statute of limitations by the Missouri Supreme Court in the case of *Northwestern Brewers Supply Co.* v. *Vorhees*, —— Mo. ——, 203 S.W. (2d) 422, and as such was applied to the case at bar by the Missouri Supreme Court, which held that this statute, providing that suits on judgments, either domestic or foreign, are barred after ten years from the date of their original rendition, unless revived on personal service within such ten year period, barred the present action on the Colorado judgment. This holding is in complete accord with the decision of the Supreme Court of the United States in such cases as *McElmoyle* v. *Cohen*, 38 U. S. 312, 10 L. Ed. 177, and *Bacon* v. *Howard*, 61 U. S. 22, 15 L. Ed. 811. Both of these cases have been repeatedly cited from the date of their decision down to the present time; such citation has always been with approval and the

cases have been held to be controlling. In the *McElmoyle* case, *supra*, the Court said:

> "* * * But the point might have been shortly dismissed with this sage declaration, that there is no direct constitutional inhibition upon the States, nor any clause in the Constitution from which it can be even plausibly inferred that the States may not legislate upon the remedy in suits upon the judgments of other States, exclusive of all interference with their merits. It being settled that the Statute of Limitations may bar recoveries upon foreign judgments; that the effect intended to be given under our Constitution to judgments is that they are conclusive only as regards the merits; the common law principle, then, applies to suits upon them that they must be brought within the period prescribed by the local law, the lex fori, or the suit will be barred."

Upon this basis has been built the well established rule of law that the state of the forum will apply its own statute of limitations to suits upon foreign judgments, and that such action does not contravene the full faith and credit clause of the Constitution of the United States (Article IV, Sec. 1). See 34 C. J. 1110, Judgments, Sections 1577 and 1578, 52 A.L.R. 567, and 31 Am. Jur. 346, Judgments, Sections 848, where this general rule is stated thus:

> "As to the operation of the full faith and credit provision, it has uniformly been held that each of the States of the Union may pass a law limiting the time within which an action may be brought on a judgment rendered in another State, without thereby depriving the judgment of the full faith and credit to which it is entitled under the Constitution of the United States * * *."

Since the decision of the Missouri Supreme Court in the case at bar follows and is in accord with the generally ac-

cepted doctrine on the subject and with the controlling decisions of the Supreme Court of the United States, it is submitted that the appeal herein presents no substantial Federal question, and should therefore be dismissed.

II

Appeal Is Not the Proper Method of Securing Review Herein

This Court has held in *Roche* v. *McDonald*, 275 U. S. 449, 72 L. Ed. 365, and *Morris* v. *Jones*, 329 U. S. 545, 91 L. Ed. 488, that the question of whether or not full faith and credit has been given to a foreign judgment does not present a ground for appeal, and that cases involving such questions can only be reviewed by this Court on writ of certiorari. This decision was reached under Section 237 of the Judicial Code (28 U.S.C.A. Sec. 344). The same provisions now appear, without material change, in Sections 1257 and 2103 of Title 28 U.S.C.A. as revised and effective September 1, 1948. Thus the decision of the two cases just cited should be controlling herein, even though we are now dealing with the provisions of the revised Code.

From a consideration of these cases, it is apparent that appellant has attempted to secure review herein by an unauthorized method, and for this reason the appeal herein should be dismissed.

Under the provisions of Section 2103, Title 28, U.S.C.A. as revised and effective September 1, 1948, the papers herein may be considered as a petition for writ of certiorari, but this does not help appellant. As is stated in paragraph 5 of Rule 38 of this Court, review on certiorari is not a matter of right, but of sound judicial discretion. The decision of the Supreme Court of Missouri in the case at bar is in complete accord with and follows the controlling decisions of this Court, as has been pointed out under point

Number One herein above. There is no conflict between this decision of the Missouri Supreme Court and the controlling decisions of this Court nor is there conflict between the decision of the Missouri Supreme Court in the case at bar and the decisions of other State Supreme Courts or of the lower Federal Courts. Under these circumstances, it is submitted that the case at bar does not present a proper occasion for this Court to exercise its discretion and grant the writ of certiorari.

Thus it is seen that the decision of the Supreme Court of Missouri in the case at bar is in accord with the controlling decisions of this Court, and therefore this appeal presents no substantial Federal question, and the case is not one wherein the Court should exercise its discretion to grant certiorari. It is, therefore, respectfully submitted that this appeal should be dismissed and, treating the appeal as a petition for writ of certiorari, the petition should be denied.

Respectfully submitted,

DANIEL L. BRENNER,
2700 Fidelity Building,
Kansas City 6, Missouri,
Attorney for Appellee.

ROACH, BRENNER & WIMMELL,
Kansas City, Missouri,
Of Counsel.